

CONDOMINIUM AND COMMUNITY**ASSOCIATION PROVISIONS**

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses the filing and recording of certain information under Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act.

Highlighted Provisions:

This bill:

- ▶ addresses the contents of an association's notice of lien on a unit;
- ▶ requires an agent for an association to register with the Division of Corporations and Commercial Code and provide certain information;
- ▶ requires the filing of a notice of an association's right to claim a lien against a lot owner if the association does not record governing documents under Title 57, Chapter 8a, Community Association Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-20, as last amended by Laws of Utah 2003, Chapter 265

57-8a-203, as enacted by Laws of Utah 2004, Chapter 153

ENACTS:

57-8-40, Utah Code Annotated 1953

57-8a-209, Utah Code Annotated 1953

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **57-8-20** is amended to read:

34 **57-8-20. Lien for nonpayment of common expenses.**

35 (1) (a) Every unit owner shall pay ~~[his]~~ a proportionate share of the common expenses.

36 (b) Payment under Subsection (1)(a) shall be in the ~~[amounts]~~ amount and at the
37 ~~[times]~~ time determined by the management committee in accordance with the terms of the
38 declaration or the bylaws.

39 (2) (a) An assessment levied against each unit is a debt of the owner at the time the
40 assessment is made and is collectible as ~~[such]~~ a debt.

41 (b) The association ~~[is entitled to]~~ may recover all expenses incurred by the association
42 in collecting any unpaid assessment, including reasonable ~~[attorneys']~~ attorney fees, whether an
43 action is brought against an owner under Subsection (3), or whether a suit to foreclose the lien
44 upon the unit is instituted under Subsection (4).

45 (3) (a) Suit to recover a money judgment for any unpaid assessment ~~[is maintainable]~~
46 may be brought without foreclosing or waiving the lien securing it.

47 (b) The prevailing party in ~~[the action is entitled to]~~ an action under Subsection (3)(a)
48 may recover its costs ~~[of suit]~~ and reasonable ~~[attorneys']~~ attorney fees.

49 (4) (a) Subject to Subsection 57-8-37(6), if ~~[any]~~ a unit owner fails or refuses to pay an
50 assessment when due, that amount constitutes a lien on the interest of the owner in the
51 property, and ~~[upon]~~ the recording of notice of lien ~~[by the manager or management committee]~~
52 it is evidence of the lien, which is a lien upon the unit owner's interest in the property ~~[prior]~~
53 to before all other liens and encumbrances, recorded or unrecorded, except:

54 (i) tax and special assessment liens on the unit in favor of any assessing unit or special
55 improvement district; and

56 (ii) encumbrances on the interest of the unit owner recorded ~~[prior to]~~ before the date
57 ~~[such]~~ the notice is recorded ~~[which]~~ that by law ~~[would be a lien prior to]~~ are liens before a
58 subsequently recorded ~~[encumbrances]~~ encumbrance.

59 (b) A recorded notice of lien under this section shall include:

60 (i) the name, address, and telephone number of the manager or management
61 committee, or person signing on behalf of the manager or management committee that is
62 claiming the lien;

63 (ii) the name of the unit owner, if known or as shown on the association's records,
64 subject to the lien;

65 (iii) the date of the first delinquency on which the lien is based;

66 (iv) the amount for which the lien is claimed;

67 (v) a legal description of the unit subject to the lien, sufficient for identification; and

68 (vi) the name and signature of the person and any acknowledgment or certificate
69 required under Title 57, Chapter 3, Recording of Documents.

70 ~~[(b)]~~ (c) (i) The lien for nonpayment of an assessment may be enforced by ~~[sale or]~~
71 foreclosure of the unit owner's interest by the manager or management committee.

72 (ii) The ~~[sale or]~~ foreclosure under Subsection (4)(c)(i) shall be conducted in the same
73 manner as foreclosures ~~[in deeds of trust or]~~ of mortgages ~~[or in any other manner permitted by~~
74 ~~law]~~.

75 ~~[(c)]~~ (d) (i) In any foreclosure ~~[or sale]~~, the unit owner shall pay the costs and expenses
76 of ~~[such]~~ the proceedings and reasonable ~~[attorneys']~~ attorney fees.

77 (ii) If so provided in the declaration or bylaws, in the case of foreclosure, the owner
78 shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require
79 the appointment of a receiver to collect the rental without regard to the value of the mortgage
80 security.

81 ~~[(d)]~~ (e) Unless otherwise provided in the declaration, the manager or management
82 committee may bid ~~[in]~~ on the unit at foreclosure ~~[or other sale]~~ and hold, lease, mortgage, or
83 convey the unit.

84 (5) (a) ~~[When]~~ If authorized in the declaration ~~[or]~~, bylaws, or association rules if the
85 owner fails or refuses to pay any assessment when due, the management committee may, after
86 giving notice and an opportunity to be heard in accordance with Subsection (5)(b):

87 (i) terminate an owner's right to receive utility services paid as a common expense; and

88 (ii) terminate an owner's right of access to and use of recreational facilities.

89 (b) (i) Before terminating utility services or right of access to and use of recreational
90 facilities under Subsection (5)(a), the manager or management committee shall give written
91 notice to the unit owner in the manner provided in the declaration, bylaws, or association rules.

92 (ii) The notice required by Subsection (5)(b)(i) shall state:

93 ~~[(f)]~~ (A) utility services or right of access to and use of recreational facilities will be

terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

~~[(ii)]~~ (B) the amount of the assessment due, including any interest or late payment fee; and

~~[(iii)]~~ (C) the right to request a hearing under Subsection (5)(c).

(c) (i) A unit owner who is given notice under Subsection (5)(b) may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received.

~~[(i) The hearing]~~ (ii) A hearing under Subsection (5)(c)(i) shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules.

~~[(ii)]~~ (iii) If a hearing is requested, utility services or right of access to and use ~~[or]~~ of recreational facilities may not be terminated until after the hearing ~~[has been]~~ is conducted and a final decision ~~[has been]~~ is entered.

(d) Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility services to the unit.

(e) The remedies provided in this Subsection (5) ~~[shall only]~~ apply only to residential condominium units.

(6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee, upon compliance with this Subsection (6)(a), may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid.

(b) (i) The manager or management committee ~~[must]~~ shall give the unit owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant~~[- This notice shall:]~~ under Subsection (6)(a).

(ii) Notice under Subsection (6)(b)(i) shall:

~~[(i)]~~ (A) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

~~[(ii)]~~ (B) state the amount of the assessment due, including any interest or late payment

125 fee;

126 ~~[(iii)]~~ (C) state that any costs of collection, not to exceed \$150, and other assessments
127 that become due may be added to the total amount due; and

128 ~~[(iv)]~~ (D) provide the requirements and rights described in Subsections (6)(b) through
129 (f).

130 (c) (i) If the unit owner fails to pay the amount of the assessment due by the date
131 specified in the notice, the manager or management committee may deliver written notice to
132 the tenant, in accordance with the declaration, bylaws, or association rules, that demands future
133 payments due to the owner be paid to the association pursuant to Subsection (6)(d).

134 (ii) A copy of the notice must be mailed to the unit owner.

135 (iii) The notice provided to the tenant ~~[must]~~ shall state:

136 ~~[(i)]~~ (A) that due to the owner's failure to pay the assessment within the time period
137 allowed, the owner has been notified of the management committee's intent to collect all lease
138 payments due to the association pursuant to Subsection (6)(a);

139 ~~[(ii)]~~ (B) that until notification by the association that the assessment due, including
140 any interest or late payment fee, has been paid, all future lease payments due to the owner are
141 to be paid to the association; and

142 ~~[(iii)]~~ (C) payment by the tenant to the association in compliance with this Subsection
143 (6) will not constitute a default under the terms of the lease agreement. If payment is in
144 compliance with this Subsection (6) suit or other action may not be initiated by the owner
145 against the tenant for failure to pay.

146 (d) (i) All funds paid to the association pursuant to Subsection (6)(c) shall be deposited
147 in a separate account and disbursed to the association until the assessment due, together with
148 any cost of administration, which may not exceed \$25, is paid in full.

149 (ii) Any remaining balance ~~[must]~~ shall be paid to the owner within five business days
150 of payment in full to the association.

151 (e) (i) Within five business days of payment in full of the assessment, including any
152 interest or late payment fee, the manager or management committee ~~[must]~~ shall notify the
153 tenant in writing that future lease payments are no longer due to the association.

154 (ii) A copy of this notification ~~[must]~~ shall be mailed to the unit owner.

155 (f) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive

occupancy of a unit by ~~[any]~~ a person ~~[or persons]~~, other than the unit owner, for which the unit owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

(7) (a) (i) The manager or management committee shall, upon the written request of any unit owner and upon payment of a reasonable fee not to exceed \$10, issue a written statement indicating any unpaid assessments with respect to the unit covered by the request.
~~[This]~~

(ii) A written statement under Subsection (7)(a)(i) of unpaid assessments is conclusive upon the remaining unit owners and upon the manager and management committee in favor of all persons who rely on the written statement in good faith.

(b) Unless the manager or management committee complies with the request for a statement of any unpaid assessments within ten days, all unpaid assessments ~~[which]~~ that became due ~~[prior to]~~ before the date the request was made are subordinate to the lien held by the person requesting the statement.

(8) (a) Any encumbrancer holding a lien on a unit may pay any unpaid assessment due with respect to the unit.

(b) Upon payment, the encumbrancer has a lien on the unit for the amounts paid.

(9) Remedies provided in this section, by law, or in equity are not considered to be mutually exclusive.

Section 2. Section **57-8-40** is enacted to read:

57-8-40. Registration of agent.

(1) If an association of unit owners or management committee appoints an agent to receive and collect each owner's share of common expenses, the agent shall register as an agent for the association of unit owners or management committee with the Division of Corporations and Commercial Code within 70 days after appointment.

(2) Registration as an agent under Subsection (1) consists of filing a statement with the Division of Corporations and Commercial Code including the:

(a) agent's name;

(b) agent's street address;

(c) agent's phone number;

(d) name of the association;

(e) date of the agent's appointment; and

(f) number of units in the development.

(3) If an association of unit owners or management committee replaces an agent or any of the information required by Subsection (2) changes, the agent shall register with the Division of Corporations and Commercial Code or update the information within 70 days after the replacement or change.

Section 3. Section **57-8a-203** is amended to read:

57-8a-203. Unpaid assessment -- Lien -- Foreclosure.

(1) (a) If an owner fails or refuses to pay an assessment when due, that amount constitutes a lien on the interest of the owner in the property.

(b) A recorded notice of lien under this section shall include:

(i) the name, address, and telephone number of the manager or management committee, or person signing on behalf of the manager or management committee that is claiming the lien;

(ii) the name of the unit owner, if known or as shown on the association's records, subject to the lien;

(iii) the date of the first delinquency on which the lien is based;

(iv) the amount for which the lien is claimed;

(v) a legal description of the unit subject to the lien, sufficient for identification; and

(vi) the name and signature of the person and any acknowledgment or certificate required under Title 57, Chapter 3, Recording of Documents.

~~[(b) Upon the recording]~~ (c) Recording of notice of lien [by the manager or board of directors, a lien] is evidence of the lien described in Subsection (1)(a), which is a lien on the unit owner's interest in the property ~~[prior to]~~ before all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the unit in favor of any assessing lot or special improvement district; and

(ii) encumbrances on the interest of the lot owner:

(A) recorded ~~[prior to]~~ before the date of the recording of notice of lien described in Subsection (1)~~[(b)]~~(c); and

(B) that by law ~~[would be]~~ are a lien ~~[prior to]~~ before subsequently recorded encumbrances.

(2) (a) The manager or board of directors may enforce a lien described in Subsection (1) by ~~[sale or]~~ foreclosure of the owner's interest.

(b) The ~~[sale or]~~ foreclosure described in Subsection (2)(a) shall be conducted in the same manner as foreclosures ~~[in: (i)]~~ of mortgages~~[-or]~~.

~~[(ii) any other manner permitted by law.]~~

(3) In a ~~[sale or]~~ foreclosure described in Subsection (2)(a), the owner shall pay:

(a) the costs and expenses of the proceedings; and

(b) reasonable attorney fees.

(4) Unless otherwise provided in the declaration, the manager or board of directors may:

(a) bid at a ~~[sale or]~~ foreclosure described in Subsection (2)(a); and

(b) hold, lease, mortgage, or convey the lot that is subject to the lien.

Section 4. Section **57-8a-209** is enacted to read:

57-8a-209. Registration of agent for the board of directors.

(1) If the board of directors appoints an agent to receive and collect each owner's share of common expenses, the agent shall register as an agent for the board of directors with the Division of Corporations and Commercial Code.

(2) Registration as an agent under Subsection (1) consists of filing a statement with the Division of Corporations and Commercial Code including the:

(a) agent's name;

(b) agent's street address;

(c) agent's phone number;

(d) name of the association;

(e) date of the agent's appointment; and

(f) number of units in the development.

(3) If the board of directors replaces an agent or any of the information required by Subsection (2) changes, the agent shall register with the Division of Corporations and Commercial Code or update the information within 70 days after the replacement or change.